REMARKS

This Amendment is submitted preliminary to the issuance of an Office Action in the present application and in response to the Official Action of February 9, 2009.

The last Office Action of February 9, 2009, which was final Office Action has been carefully considered. A Request for Continued Examination (RCE) is filed herewith. Accordingly, reconsideration of the application in view of the request, the foregoing amendments and the following remarks is respectfully requested.

There are currently 22 claims on file. The fee of $492.00 for filing two claims in excess of twenty and for filing four independent claims in excess of three is being paid by credit card.

The Examiner has remained with the objection against the referred-to website referenced in paragraph **[00125]** of the specification. Applicant has amended paragraph **[00125]** to state simply that the Kazusa Institute is responsible for maintaining the databases. This information is in the public domain and accessible to anyone in the field and is therefore also considered non-essential material.

Furthermore, with respect to the Examiner's objection to the SEQ ID NOS applicant adheres to the standardized notation throughout the claims. With respect to the objected to sequence, namely Pro Lys Lys Lys Arg Lys Val, this sequence has been added to the Sequence Listing and is been properly cited in claim 11. A revised Sequence Listing is attached to this amendment.

With respect to the amendment of the claims, claim 21 has been cancelled and new claim 22 is presented herein. New claim 22 sets forth the promoter as well as the sequences of the structural proteins as well as a termination sequence.

All claims as presented herein are considered novel and nonobvious.

The Examiner has rejected claims 6, 12 and 21. Claims 6 and 21 have been canceled and claim 12 depends on new claim 22.

Claim 22 distinguishes over the Khan reference of record in that Khan utilizes primarily mutations of the FeLV "pol" gene and a truncated "env" gene. Khan does not disclose the sequences as claimed nor the limitation of codon optimization nor discloses that no splice donor or acceptor sequences are present. Therefore, the Khan reference does not anticipate claim 22.

As to the rejection of claims 9-11 and 7, 8 and 21 as being obvious over Khan in view of Schirmbeck of record, claims 1-7 have been canceled, claim 8 is dependent on new claim 22 and claims 9-11 are directly or indirectly dependent on claim 22. Claim 3 has been cancelled such that the rejection thereof is now moot.

As far as the new rejection of claims 6, 7 and 21 as being obvious in view of the Paoletti reference of record is concerned, claims 6, 7 and 21 have been canceled, therefore rendering the rejection moot.

Referring to the rejection of claim 21 as lacking antecedent basis, that claim has been canceled rendering the rejection moot. New claim 22 does no recite that language.
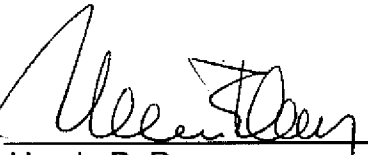
With respect to the objection to claim 8, the offensive language has been eliminated such that the objection is now moot.

In view of the above, each of the presently pending claims in this application is considered patentably differentiated over the prior art of record and believed to be in condition for allowance. Reconsideration and allowance of the present application are thus respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

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